

IBC Legal's 5th Annual

European Public Procurement 2015

The definitive update on European public procurement to help you successfully navigate the transitional period



Marc Tarabella
EUROPEAN PARLIAMENT



Ana Rodriguez Perez
EUROPEAN COMMISSION



Marc Steiner
SWISS FEDERAL ADMINISTRATIVE COURT



Totis Kotsonis
EVERSHEDS



Sarah Hannaford QC
KEATING CHAMBERS



Edward Vera-Cruz
WEST SUSSEX COUNTY COUNCIL

Le Châtelain Brussels Boutique Hotel,
Brussels, Belgium
22-23 September 2015



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The definitive update on European public procurement to help you successfully navigate the transitional period

SRA and BSB CPD:
13 hours

Day 1 – Tuesday 22nd September 2015

08.30 Registration and coffee

09.00 Chairman's Opening Remarks



Professor Laurence Gormley
UNIVERSITY OF GRONINGEN, THE NETHERLANDS

09.10 The New EU Procurement Directives: Current Concerns and Considerations with Implementation



Marc Tarabella
MEP
EUROPEAN PARLIAMENT, BELGIUM

09.50 Learning from the UK Experience of Implementation



- What choices did the UK government make?
- Implementation experience to date



Peter Bennett
Senior Policy Adviser
CROWN COMMERCIAL SERVICE, CABINET OFFICE, UK

10.30 Morning Coffee Break

10.50 Implementation of the New Directives: Practical Concerns



- What are the different member states planning to do?
- What is different in the new directives?
- Timelines
- Challenges
- Dealing with the transitional period and revising draft contracts

Moderator:



Professor Laurence Gormley
UNIVERSITY OF GRONINGEN, THE NETHERLANDS



Ana Rodriguez Perez
Deputy Head of Unit, DG for Internal Market, Industry, Entrepreneurship and SMEs
EUROPEAN COMMISSION, BELGIUM



Steven Van Garsse
Head of PPP Knowledge Centre
FLEMISH GOVERNMENT, BELGIUM



Marc Steiner
Judge
SWISS FEDERAL ADMINISTRATIVE COURT, SWITZERLAND



Stuart Broom
Advisor
EUROPEAN PPP EXPERTISE CENTRE,
EUROPEAN INVESTMENT BANK, LUXEMBOURG

11.50 Understanding the Light Touch Regime

- What was the point of removing the part A / part B distinction and replacing it with a Light Touch regime?
- What types of contracts does it apply to? Is there any sense to the selection?
- And if it is the right approach for these contracts, why not apply a Light Touch regime to all public contracts? Why shouldn't this be the future of all public procurement?
- What are the applicable obligations? What can Member States' systems add or subtract?
- What should authorities be able to achieve with a Light Touch procurement?



Michael Bowsher QC
MONCKTON CHAMBERS, UK

12.35 Networking Lunch

13.35 Comparing the Directives:



Part I: Spotlight on the Concessions Directive

- Implementation
- Principles and pitfalls
- How and why is it different to the public sector directive?



Steven Van Garsse
Head of PPP Knowledge Centre
FLEMISH GOVERNMENT, BELGIUM

Part II: Spotlight on the Utilities Directive

- What are the key changes?
- What is the scope of the new Directive?
- What is the likely effect of the new definition of "special or exclusive rights"?
- Material changes and termination of contracts provisions – how will these affect utility procurement?
- What changes does the legislation introduce in relation to tender procedures?
- What are the key differences with the public sector directive?
- The question of the application of Treaty principles to utilities



Totis Kotsonis
Partner
EVERSHEDS, UK

14.55 How to Take Advantage of the New Procedures Under the Public Sector Directive

- Bidding procedure
- Innovation partnership: what does innovation mean?
- Competitive procedure with negotiation: how to use it?
- How do new processes compare to the old ones? When would you use them?
- Following due process
- Practical tips for consortia



Jonathan Davey
Partner
ADDLESHAW GODDARD, UK

15.35 Afternoon coffee break

15.55 What Does the Public Sector Directive Mean for SMEs?

- Policy considerations
- Furthering the SME agenda in the UK: the 'Lord Young' reforms



Warsha Kale
Associate Director
BERWIN LEIGHTON PAISNER, UK

16.35 What Will be the Practical Impact of the New Directives?



- Speakers will answer key questions, including:
- How can clients take advantage of the new directive?
 - What is different under the light touch regime?
 - What is different with setting award criteria and evaluating tenders?

Delegates will be able to submit questions in advance and on the day.

Speakers to include:



Professor Laurence Gormley
UNIVERSITY OF GRONINGEN, THE NETHERLANDS



Edward Vera-Cruz
Head of Procurement & Contract Services
WEST SUSSEX COUNTY COUNCIL, UK



Totis Kotsonis
Partner
EVERSHEDS, UK



Marc Steiner
Judge
SWISS FEDERAL ADMINISTRATIVE COURT, SWITZERLAND



Tracey Lee
Senior Legal Counsel & Company Secretary
THAMES TIDEWAY TUNNEL

17.20 Chair's closing remarks

17.25 End of Day 1

Day 2 – Wednesday 23rd September 2015

08.30 Registration and coffee

09.00 Chairman's Opening Remarks



Professor Laurence Gormley
UNIVERSITY OF GRONINGEN, THE NETHERLANDS

09.10 Material Changes and Modification of Contracts

- Article 72 of the directive
- Transitional period
- How to avoid triggering a material change
- How to change a struggling contract?
- How to structure variation clauses
- Challenges at a late stage
- Question of bias
- How to future proof contracts
- Case law update including *Winchester City Council*



Cyrus Mehta
Partner
NABARRO, UK

10.05 Lessons Learnt from Recent Significant Cases at the ECJ

- Types of contract covered
- In-house procurement
- Exclusion grounds
- Conflicts of interest
- Evaluation of bidder team members
- Discretion to terminate a tender process
- Voluntary transparency notices



Adrian Brown
Of Counsel
HERBERT SMITH FREEHILLS, BELGIUM

10.55 Morning coffee break

11.15 Practical Issues in Evaluating Tenders and Awarding Contracts



- Evaluation criteria: getting it right
- Award letters
- Criteria
- Practical tips to prevent challenges arising
- Price evaluation, transparency and competition issues
- Using the right contracts: KPIs, metrics, financial measurements
- Debriefing – how to structure it so that it's not unfair? What are the minimal legal requirements?
- Scoring methodologies – the do's and don'ts



Ciara Kennedy-Loest
Partner
HOGAN LOVELLS, BELGIUM



Tracey Leforte
Deputy Director, Procurement
BARTS HEALTH, UK

12.05 Exclusions

- How will it be implemented by different states?
- Will there be coordination between member states?
- Corruption
- Competition law
- Past performance
- Recent case law



Dr. Hans-Joachim Prieß
Partner
FRESHFIELDS BRUCKHAUS DERINGER, GERMANY

"Excellent conference, inclusive and comprehensive sessions across a wide landscape"

R Morton, 12 Pillars

12.50 Networking Lunch

13.50 Recent Developments in Remedies



- Overview of the effect of remedies
- How easy is it to win in court?
- What are remedies doing to the procurers?
- Is there better management of the regime?
- Setting aside of a contract

Moderator:



Professor Laurence Gormley
UNIVERSITY OF GRONINGEN, THE NETHERLANDS



Sarah Hannaford QC
KEATING CHAMBERS, UK



Patrick McGovern
Partner
ARTHUR COX, IRELAND



Jesper Kaltoft
Partner
BECH-BRUUN, DENMARK



Anna Ulfsdotter Forssell
Partner
DELPHI, SWEDEN

14.45 Understanding Social and Environmental Criteria

- What does it mean?
- Lifecycle costing
- Can you include minimal wage clauses in award criteria?
- Can staff qualifications and experience be considered when awarding contracts?
- What practical problems might arise?
- Case law



Mark Clough QC
Senior Counsel
DENTONS, BELGIUM

15.30 Afternoon coffee break

15.50 Framework Agreements: Transparency and Competition Issues

- Striking the balance right between transparency and competition
- In which members states have frameworks led to better results?
- Price evaluation formulae: how do they work? What is their impact?
- Confidentiality and commercial advantage issues



Dr. Roland Stein
Counsel
FRESHFIELDS BRUCKHAUS DERINGER, GERMANY

16.35 State Aid and Public Procurement

- Impact of state aid rules on public procurement
- Impact of public procurement on state aid assessment
- Privatisations and sale of land
- *Altmark* ruling and services of general economic interest
- Transport networks, postal services and social service
- Procurement platforms and state aid



Prof. Dr. Pieter Kuypers
Professor; Partner
RADBOD UNIVERSITY NIJMEGEN; AKD, NETHERLANDS AND BELGIUM

17.20 Chair's closing remarks

17.25 End of Conference

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